

LEGISLATIVE AUDIT COMMISSION



Review of
Office of Banks and Real Estate
Two Years Ended June 30, 2002

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REVIEW: 4185
OFFICE OF BANKS AND REAL ESTATE
TWO YEARS ENDED JUNE 30, 2002

FINDINGS/RECOMMENDATIONS - 6

ACCEPTED - 1
IMPLEMENTED - 5

REPEATED RECOMMENDATIONS - 2

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 7

This review summarizes an audit of the Office of Banks and Real Estate for the two years ended June 30, 2002, filed with the Legislative Audit Commission March 11, 2003.

The Office of Banks and Real Estate was created on June 1, 1996 with the merger of two agencies, the Commissioner of Banks and Trust Companies and the Commissioner of Savings and Residential Finance.

The Office of Banks and Real Estate oversees State-chartered banks and thrifts, ATMs not owned by financial institutions, corporate fiduciaries, real estate brokers and agents, real estate appraisers, real estate companies, timeshare/land sales, mortgage brokers and bankers, leasing agents, check printers, pawnbrokers, auctioneers, and beginning January 1, 2003, home inspectors.

The Agency receives no appropriations from the General Revenue Fund, operating instead from annual appropriations by the General Assembly from the Appraisal Administration Fund, the Auction Regulation Administration Fund, the Bank and Trust Company Fund, the Pawnbroker Regulation Fund, the Real Estate License Administration Fund, and the Savings and Residential Finance Regulatory Fund. The Agency has four Bureaus: Bureau of Administration, Bureau of Banks and Trust Companies, Bureau of Real Estate Professions, and Bureau of Residential Finance. The operations of the Agency are wholly funded through fees assessed from supervised institutions or paid by licensees in the form of license and renewal fees. Appendix A shows the number of institutions and individuals regulated by the Agency during FY02, FY01, and FY2000.

During the two-year period covered by the audit, the Agency Commissioner was Mr. William Darr. Currently, Mr. D. Lorenzo Padron is the Commissioner of Banks and Real Estate. His appointment became effective on May 5, 2003. Mr. Padron was not previously associated with the Agency.

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The average number of employees was:

2002 - 274; 2001 - 263; 2000 - 280.

Expenditures From Appropriations

The General Assembly appropriated a total of \$33,218,500 to the Agency in FY02. Appendix B summarizes these appropriations and expenditures for the period under review. Overall expenditures increased from \$26,993,915 in FY01 to \$28,571,299 in FY02, an increase of \$1,577,384, or 5.8%. The Real Estate Research and Education Fund was added in FY01. Variations in expenditures are attributable to the addition of employees, the new fund, and the fluctuations caused by alternating year payment of national registry fees in the Appraisal Administration Fund. Lapse period expenditures for FY02 were almost \$2.2 million, or 7.5% of total expenditures.

Cash Receipts

Appendix C provides a summary of cash receipts for FY02-FY2000. The revenues of the Agency are deposited in 11 funds: Savings and Residential Finance Regulatory Fund, Appraisal Administration Fund, Pawnbroker Regulation Fund, Real Estate Recovery Fund, Auction Regulation Administration Fund, Auction Recovery Fund, Real Estate Audit Fund, Bank and Trust Company Fund, Real Estate License and Education Fund, Real Estate License Administration Fund, and Illinois Bank Examiners' Education Foundation. Total cash receipts increased from \$28,524,255 in FY01 to \$32,517,415 in FY02. The increase in receipts is attributed to appraisal license renewals being assessed every two years, and license fees for auctioneers are collected biennially.

The Bank Examiners' Education Foundation Fund is a fund held outside the State Treasury and is operated as an endowment-like trust fund whose earnings are to be used to provide continuing professional education to bank examiners.

Accounts Receivable

Appendix D summarizes the accounts receivable of the Agency as of June 30, 2002 and 2001. Accounts receivable for FY02 and FY01 were \$5.294 million and \$5.262 million, respectively, with the majority of the accounts being current. The Agency uses private collection services and the offset system to collect old receivable balances. The allowance for doubtful accounts is comprised entirely by the Real Estate Recovery Fund.

Property and Equipment

Property and equipment transactions during the period under review are summarized in Appendix E. The balance increased from \$2,622,984 to \$3,249,417 as of June 30, 2002.

Accountants' Findings and Recommendations

Condensed below are the eight findings and recommendations included in the audit report. Of these, two are repeated from prior audits. The following recommendations are classified on the basis of information provided by D. Lorenzo Padron, Commissioner of the Office of Banks and Real Estate, in a letter received via email dated August 8, 2003.

Accepted or Implemented

1. Establish procedures to ensure that applicants are not issued Auctioneer Licenses unless they meet all requirements of the statute. (Repeated-2000)

Findings: The agency issued an Auctioneer license when all requirements for issuance were not met. In a sample of 25 applications, one applicant was issued a license without meeting the requirement of having attained a high school diploma or GED.

Response: Implemented. Procedures are now in place to ensure that applicants meet the requirements of the Act prior to a license being issued. The Agency requested the required proof of education documents from the referenced licensee above. The licensee indicated he was not currently practicing which the Agency confirmed. Since this licensee's license is due to expire in September 2003 and is not currently practicing, management determined that it was not necessary to pursue formal actions to revoke the license. The licensee is monitored for any practice activity. The license will not be renewed without submission of the required documentation.

The cause of the repeat finding was due to the fact that procedures implemented following the original finding (00-3) were not in place until after this individual was licensed. The original license date was August 4, 2000. In response to the initial finding (00-3), a letter was sent to the licensee requesting proof of high school diploma or equivalent (GED). No response has been received from the licensee. Therefore, the license was placed in a "non-renewed" (inactive) status. A licensee cannot return a license to an "active" status without certifying that the licensee has the required education. A license number is required in any advertisement, contract, etc., in conjunction with any auction activity. The Agency and the industry watch auction activity and would note if a licensee was operating without an "active" status license and appropriate action would be taken.

Accepted or Implemented - continued

2. Ensure compliance with the Fiscal Control and Internal Auditing Act. (Repeated-2000)

Findings: The Agency did not perform audits of the major systems of internal accounting and administrative controls at least once every two years. The agency should have tested the following areas and has not:

- Personnel/payroll
- Travel
- Telecommunications
- Auto expenditures
- Contractual services expenditures
- Printing expenditures
- Revenues/receivables
- Petty cash/local funds
- GAAP reporting
- Lapse period expenditures.

Per Agency personnel, this condition was caused by not having adequate staff and resources to complete the audits of major systems at least once every two years.

Response: Implemented. The failure to comply with the Fiscal Control and Internal Auditing Act (30 ILCS 10/2003) was due to the lack of adequate staff to complete the audits of major systems at least once every two years. Also, the Agency did not have a chief internal auditor from January 31, 2002 through March 26, 2002, due to the resignation of the incumbent.

Agency management recognizes the importance of complying with the Act and of auditing major systems at least once every two years. The Agency has hired a chief internal auditor as of November 1, 2002 and has an information systems auditor on staff as well.

The Agency and the chief internal auditor have assessed staffing needs, developed and implemented plans to meet the requirements of the Act by June 30, 2004.

3. Enforce the provisions of the Residential Mortgage License Act of 1987.

Findings: The Residential Mortgage License Act of 1987 requires that there be created the Residential Mortgage Board to serve under the Commissioner. The Residential Mortgage Board was not active from October 1998 through January 2002.

Response: Implemented. Due to a number of board vacancies and a delay in filling the vacancies caused by an inability to find qualified individuals, a quorum could not be established. This curtailed the activity of the Residential Mortgage Board. During this audit

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period, a new board was appointed on January 31, 2002 and has been meeting regularly since.

- 4. Obtain annually a completed and signed certification of automobile liability insurance and valid Illinois driver's license form from every employee authorized to operate a vehicle for State business purposes as required by law.**

Findings: The Agency did not annually obtain current evidence of automobile liability insurance and valid Illinois' driver's license from every employee authorized to operate a vehicle for State purposes.

Response: Implemented. The Agency has implemented procedures to insure that personnel assigned a State vehicle certify that they are duly licensed and carry at least the minimum insurance coverage required annually by July 31, in compliance with the Act. As of July 31, 2003 all employees assigned a State vehicle have on file with the Agency a signed certification of automobile liability insurance and valid Illinois driver's license.

Employees using State or privately owned vehicles on State business, in accordance with the State Travel regulations, OBRE has modified the travel voucher template to include the following statement (or a similar statement to this effect) in the comments section of the travel voucher: "Employee certifies that he/she possesses a currently valid Illinois driver's license and carries automobile liability insurance in at least the minimum amounts specified in Public Act 85-730." The Fiscal Director issued an advisory to all employees on May 20, 2003 notifying them of this change in procedure.

- 5. Direct all employees to report personal use of State vehicles to the payroll clerk, and have the payroll clerk forward the information to the Comptroller's Office so the fringe benefit amount can be properly included on their W-2.**

Findings: Two employees did not report the value of their personal usage of State vehicles to the Comptroller's Office.

Response: Implemented. Additional procedures were developed to address the personal use of State vehicles by Office of Banks and Real Estate employees, including the valuation of personal use to be included on the State Officers' and employee's W-2. State Officers and OBRE employees assigned a State vehicle are required to report their personal use monthly to staff in the Fiscal Division. Human Resource Personnel will compute the value of personal use and either report it to the State Officers' Payroll Section at the Comptroller's Office (for State Officers) or apply it to the payroll (for OBRE employees) quarterly for inclusion in their respective W-2's at the end of each calendar year.

Accepted or Implemented - concluded

6. Enforce the provisions of the Savings Bank Act or seek legislative remedy to the statutory requirement.

Findings: The Agency did not establish a Savings Bank Examiner Training Foundation in accordance with statute.

Response: Accepted. The language included in the Savings Bank Act of 1990 was to ensure that thrift examiners received the most up-to-date level of training in their field. In the ensuing twelve (12) years, the annual appropriation process has provided adequate funding to ensure that a well-trained examination force is maintained. Since fees assessed against the thrift industry fund the appropriation, and since the training fees in the appropriation met the training needs, it was not seen as necessary to establish a Training Foundation that would make additional assessments against the industry to fund itself.

The Office of Banks and Real Estate will work with the thrift industry to review this matter and seek legislative change to the language.

Emergency Purchases

The Illinois Purchasing Act (30 ILCS 505/1) states, "The principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts..." The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption for emergencies "involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records. The Chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make 'quick purchases', including but not limited to items available at a discount for a limited period of time."

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption. During FY01 and FY02, the Office of Banks and Real Estate did not file any affidavits for emergency purchases.

Headquarters Designations

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The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission. Each State office is required to file reports of all its officers and employees for whom official headquarters have been designated at any location other than that at which official duties require them to spend the largest part of their working time.

The Office of Banks and Real Estate report filed July 15, 2002 indicates that the Office of Banks and Real Estate had 28 employees assigned to locations other than that at which official duties required them to spend the largest part of their working time.